

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

AUG 15 2008

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

MARVIN ANTHONY CUMMINGS,

Petitioner,

v.

JAMES A. BEATY, Warden,

Respondent.

Civil Action No. 08-1144 (UNA)

MEMORANDUM OPINION

The petitioner, a prisoner in federal custody, has responded to an Order of this Court requiring petitioner to submit a certified copy of his trust fund statement for six months, and moved for the submission to be construed as fulfilling the requirements of the Order. That Order was improvidently issued because it does not apply to a prisoner filing a petition for a writ of habeas corpus, as this petitioner did. Therefore, that Order will be vacated and the petitioner's motion to construe will be denied as moot.

Petitioner has filed a *pro se* petition for a writ of habeas corpus and an application to proceed *in forma pauperis*. The Court will grant the application to proceed *in forma pauperis*, but will dismiss the petition for lack of subject matter jurisdiction.

Plaintiff is serving a sentence imposed by the United States District Court for the Middle District of North Carolina. (Pet. at 2.) Here he challenges his conviction and sentence on the habitual felon counts. (*Id.* at 5.) Federal law provides that a prisoner in custody under sentence imposed by a federal court may appeal that conviction and sentence by motion to the court that

imposed the sentence. 28 U.S.C. § 2255(a). *See Taylor v. United States Board of Parole*, 194 F.2d 882, 883 (D.C. Cir. 1952) (attack on the constitutionality of the statute under which defendant was convicted and sentenced is properly pursued by motion under 28 U.S.C. § 2255); *Ojo v. Immigration & Naturalization Service*, 106 F.3d 680, 683 (5th Cir. 1997) (the sentencing court is the only court with jurisdiction to hear defendant's complaint regarding errors that occurred before or during sentencing). This court is not the court that imposed the sentence, and therefore has no jurisdiction of this matter. Accordingly, this appeal will be dismissed without prejudice for lack of subject matter jurisdiction.

A separate order accompanies this memorandum opinion.

Date: 8/14/02



United States District Judge